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PENNSYLVANIA STATUTE TAXING ANTHRACITE COAL UPHELD.

The Supreme Court of the United States, in the case of Heisler v. Thomas Colliery Co. et al, (43 Sup. Ct. 83), upholds the validity of a statute of Pennsylvania which imposes a tax on anthracite coal.

In 1913, the Pennsylvania General Assembly passed an act imposing a tax of 2½ per cent upon anthracite coal, and providing for the distribution of the tax.

The act was adjudged a violation of the Constitution of the commonwealth, which required uniformity of taxation (Commonwealth v. Alden Coal Co., 251 Pa. 134, 96 Atl. 246, L. R. A. 1916F, 154, and Commonwealth v. St. Clair, 251 Pa. 159, 96 Atl. 254).

In 1921 the commonwealth passed the act here involved. It provided that from and after its passage each ton of anthracite coal mined, "washed or screened, or otherwise prepared for market" in the commonwealth should be "subject to a tax of 1½ per cent of the value thereof when prepared for market". It was provided that the tax should be assessed at the time when the coal has been subjected to the indicated preparation "and is ready for shipment or market".

Plaintiff in error, alleging himself to be a stockholder of the Thomas Colliery Company, brought this suit to have the act adjudged and decreed to be unconstitutional and void, and to enjoin that company and its directors from complying with the act, and to enjoin defendant in error, Samuel L. Lewis, Auditor General of the Commonwealth, and the defendant in error, Charles A. Snyder, Treasurer of the Commonwealth from enforcing the act.

The statute was attacked on the grounds, that the imposition of a tax on anthracite, and not on other coal constituted an arbitrary and unlawful classification; that the Commonwealth of Pennsylvania had a monopoly of the coal taxed; and that it was an illegal regulation of interstate commerce, and a violation of the Commerce Clause.

The state, of course, may classify property for the purpose of regulation and for the purpose of taxation. It is competent for a state to exempt certain kinds of property and tax others, the restraints, upon it only being against "clear and hostile discriminations against particular persons and classes". Discriminations merely are not inhibited, for it has been recognized that there are "discriminations which the best interests of society require" (Bell's Gap Railroad Co. v. Pennsylvania, 134 U. S. 232, 237, 10 Sup. Ct. 533, 33 L. Ed. 892). The purpose of legislation may not be the correction of some definite evil, but may be only to remove "obstacles to a greater public welfare".

"Any classification is permissible which has a reasonable relation to some permitted end of governmental action. It is enough if the classification is reasonably founded in 'the purposes and policy of taxation' " (Watson v. State Comptroller, 254 U. S. 122, 41 Sup. Ct. 43, 65 L. Ed. 170). Facts which can be reasonably conceived of as having existed when the law was enacted will be assumed to justify it. (Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78, 31 Sup. Ct. 337, 55 L. Ed. 369).

The differences of the coals and their respective uses were found by the court of common pleas and the Supreme Court. One of the findings is as follows: "We find that anthracite coal differs from bituminous coal in its physical properties, namely, the amount of fixed carbon, the amount of volatile matter, color, luster and structural character. The percentage of fixed carbon in anthracite is much higher and the per-

centage of volatile matter much lower than in bituminous coal. Anthracite coal is hard, compact and comparatively clean and free from dust, while bituminous coal is softer, dusty and dirty." The court also observed that it was persuasive of the difference between the coals that the Congress of the United States and the Canadian Parliament in levying import taxes put the coals in different classes, and that the railroads of Pennsylvania so separated them, and that, therefore, quoting another, the classification was "one which actually exists in the business world".

As to the tax being on a product that is in interstate commerce, because intended for shipment to other states, the court in part said:

"If the possibility, or indeed certainty, of exportation of a product or article from a state determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof', wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production.

"However, we need not proceed further in speculation and argument. Ingenuity and imagination have been exercised heretofore upon a like contention. There is temptation to it in the relation of the states to the federal government, being yet superior to the states in instances or rather, having spheres of action exclusive of them. The instances cannot in all cases be precisely defined. And the uncertainty attracts disputes, and is availed of to assert or suppose collisions which, in fact, do not exist."

The owner's state of mind in relation to his goods, that is, his intention to export them, and his partial preparation to do so, does not fix their character as interstate so as to exempt them from state tax. There is a point of time when the goods cease to be domestic and begin to be protected by national law, and that time is held to be when they commence their final movement for transportation from the state of their origin to that of their destination. "Nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state" (Coe v. Errol, 116 U. S. 517, 6 Sup. Ct. 475, 29 L. Ed. 715).

A tipsy soap-box orator, who had reached the argumentative stage, sat down next to a clergyman in a street car. Wishing to start something, he drawled.

"I ain't goin' to heaven; there ain't no heaven."

The expected rise was not forthcoming.

"I say there ain't no heaven; I ain't goin' to heaven," he shouted.

The clergyman replied quietly: "Well, go to hell, then; but be quiet about it!"—Chicago Legal News.

"Well, Henry," said the Judge, "I see you are in trouble again."

"Yessuh," replied the negro. "Des las' time, Jedge, you rec'lect, you was mah lawyuh."

"Where is your lawyer this time?"

"I ain't got no lawyuh dis time," said Henry. "Ah's gwine to tell de troof."—Harper's Magazine.

NOTES OF IMPORTANT DECISIONS

CORPORATE OFFICER MAY BE "EMPLOYEE" UNDER COMPENSATION STATUTE.—The principal stockholder and executive of a corporation is not precluded from claiming compensation for injuries as an employee. It is held in Southern Surety Co. v. Childers, 209 Pac. 927, decided by the Supreme Court of Oklahoma, that he may serve both as an officer and workman under circumstances making him an employee within the meaning of the Workmen's Compensation Law, and, if he sustains injuries while performing duties in the latter capacity, he is entitled to compensation under said act.

"The authorities on this question are not in harmony, some holding that the president and majority stockholder of the corporation is not an employee within the meaning of the Workmen's Compensation Law and is not entitled to compensation for injuries sustained while engaged in manual labor for such corporation, while others hold that the ownership of stock and the incumbency of an executive office in the corporation will not prevent a recovery where the facts are such as to entitle the claimant to compensation.

"It appears to us that the better reason dictates that compensation should not be denied one because he happens to be a stockholder and president or other executive or managing officer of the corporation that employs him, and that that fact alone is not sufficient to eliminate him from those regarded as employees within the meaning of such act. Obviously, where the claimant was the chief executive officer of a large corporation and his duties did not require that he perform manual or mechanical labor, he could not be regarded as the employee within the meaning of the act or the terms of the policy, and if he sustained injuries while performing manual or mechanical labor, which was no part of his duties, but in which he acted as a mere volunteer, he would not be entitled to compensation. On the other hand, although the claimant was the owner of the majority of the stock and was the chief executive officer of a corporation, yet if he performed manual or mechanical labor as a part of his duties, such an official in his capacity as a workman might measure up in all respects to the conception of an employee within the meaning of the act. The case at bar affords an apt illustration of a case where the official of a corporation served in a dual capacity; that is, as an officer and as a workman. The claimant had owned the automobile agency and garage; he organized a corporation and transferred his assets to the corporation in exchange for 80 per cent of its capital stock and was the president of the corporation, but he was also a mechanic, and a portion of his time was occupied in manual and mechanical labor in the shop or the garage, and in testing and demonstrating cars, and while thus engaged the injury complained of occurred.

"We conclude that notwithstanding the claimant was a stockholder and president of the employer, he was an employee within the contemplation of the act. This conclusion is supported by the following authorities: Honnold on Workmen's Compensation, Vol. 1, p. 173; In re Raynes, 66 Ind. App. 321, 118 N. E. 387; Beckmann v. Olerich & Son et al, 174 App. Div. 353, 160 N. Y. Supp. 791. In Ohio Drilling Co. v. State Industrial Commission (Okla. Sup.), 207 Pac. 314, this Court held that a member of a partnership engaged in the business of drilling oil wells who performed labor for the partnership and who was injured while in the employ of the partnership was entitled to compensation under the terms of the Workmen's Compensation Law."

WORKMEN'S COMPENSATION CASES AND THE PHRASE "ODD LOT"

Considerable trouble has recently been caused in Workmen's Compensation appeals by the misapprehension on the part of county court judges of the exact meaning of the current term "Odd Lot". It seems to have been invented by Moulton, L. J., in Cardiff Corporation v. Hall, 1911, 1 K. B., at p. 1020; 4 B. W. C. C., at p. 171, where he says: "If the accident has left the workman so injured that he is incapable of becoming an ordinary workman of average capacity in any well-known branch of the labor market—if, in other words, the capacities for work left to him fit him only for special uses, and do not, so to speak, make his powers of labor a merchantable article, in some of the well-known lines of the labor market, I think it is incumbent on the employer to show that such special employment can be obtained by him. If I might be allowed to use such an undignified phrase I should say that if the accident leaves the workman's labor in the position of an 'odd lot' in the labor market, the employer must show that a customer can be found who will take it. For in such a case we are not in truth dealing with fluctuations of the labor market at all. We are dealing with the chance of someone being found who can and will avail himself of the special residue of powers which have been left in the workman." The misapplication of the phrase has been fully discussed in such cases as Foster v. Wharncliffe Woodmoor Colliery Co. Ltd., 14 B. W. C. C. 136, and Gaffney v. Chorley Colliery Co. Ltd., 14 B. W. C. C. 158, and it will be inferred from pasages in the judgments in those cases that the Court of Appeal deprecates the use of the expression. This attitude is clearly emphasized in the judgment of the Master of the Rolls in a very recent case, Clay v. Sherwood Colliery Co. Ltd., Court of Ap-

peal, 30th and 31st October, 1922, not yet reported. His lordship there said that he hoped he was not doing wrong "in expressing the wish that when learned county court judges do use that expression they will tell us what they mean by it, or tell us the facts in order to justify applying that expression to the man."—Solicitors' Journal (Eng.).

GUEST NOT REQUIRED TO CONCEAL VALUABLES FROM HOTEL EMPLOYEES.—The Supreme Court of New Mexico, in Landrum v. Harvey, 210 Pac. 104, holds that a guest is not bound to conceal his valuables from hotel employees. The facts sufficiently appear from the following quotation:

"The placing of the rings in the pillow slip for the night cannot be conclusively called negligent. Indeed that would seem a good method of concealment and conducive to safety. Leaving them there and allowing the maid to shake out and remove the linen was careless. But was it negligence in law? If its only result was that the rings thus came to the attention of an employee, who took advantage of the opportunity and stole them, the carelessness was not the cause of the loss. A guest is not bound to conceal his valuables from hotel employees. Taking these rings from the sheet onto which they may have been shaken or from the floor on which they may have fallen would be no different in law from taking them from a dressing table or from a jewel case. The question is not as to whether, because of appellant's actions, an employee had the opportunity to take them. It was the duty of appellee to furnish employees who would resist such opportunities."

INTERFERENCE WITH FACTORY NOT RESTRAINT OF INTERSTATE COMMERCE.—Interference with operation of brick factory, which in the ordinary course of business shipped brick out of state, held not to constitute "restraint of trade or commerce among the several states," within Sherman Anti-trust Act, §§ 1, 4 Comp. St. §§ 8820, 8823), declaring combinations or conspiracies in restraint of such trade illegal, and giving the federal courts jurisdiction to prevent violations of the act, since the production of goods destined for shipment out of the state does not constitute interstate commerce, and interference with such production does not constitute a restraint of interstate commerce, where purely local in character and confined to a single local industry, so that the effect on interstate commerce is not immediate and appreciable. Danville Local Union No. 115 v. Danville Brick Co., 283 Fed. 909.

The following is taken from the court's opinion in this case:

"The question presented, therefore, is this: Does defendants' interference with the operation of plaintiff's factory constitute 'restraint of trade or commerce among the several states,' either (a) on the ground that production of goods destined for shipment out of the state constitutes interstate commerce; or (b) on the ground that the character of the course of conduct involved is such as to have a necessary and direct effect upon interstate commerce? That production as such is not a part of interstate commerce has been repeatedly decided and affirmed. Kidd v. Pearson, 128 U. S. 1, 20, 9 Sup. Ct. 6, 32 L. Ed. 346; Delaware, Lackawanna & Western Railroad Co. v. Yurkonis, 238 U. S. 439, 444, 35 Sup. Ct. 902, 59 L. Ed. 1397; Hammer v. Dagenhart, 247 U. S. 251, 38 Sup. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724; Gable v. Vonnegut Machinery Co. (C. C. A.) 274 Fed. 66.

"That acts which interfere with production ultimately diminish the quantity of goods moving in interstate trade is self-evident, and if the interference were sufficiently widespread the effect upon interstate commerce would be immediate and appreciable. But interference which is purely local in character and confined to a single local industry, as in this case, is so insignificant in its effect that it obviously cannot be said to have any direct or appreciable influence in restraining interstate commerce within the meaning of the Anti-trust act.

"The views find direct support in the decision recently announced in United Mine Workers of America v. Coronado Coal Co., 257 U. S. —, 42 Sup. Ct. 570, 66 L. Ed. —, It would serve no useful purpose to restate the voluminous recital of facts in that case. It is sufficient to say that the issue upon which the judgment in that case was based is identical with the issue in the case at bar. Justice Taft states it thus:

" 'There are five principal questions pressed by the plaintiffs in error here. * * * The fourth is that there is no evidence to show that the conspiracy alleged against district No. 21 and the other defendants was a conspiracy to restrain or monopolize interstate commerce.' "

SOME DANGEROUS TENDENCIES IN GOVERNMENT*

By Floyd E. Thompson, Chief Justice Supreme Court of Illinois

These are momentous times. Ancient governments have crumbled and new have risen in their places. Strange experiments in government are being tried. There is a mania for exchanging the tried and proven for the new and promising. Out of all this chaos may come order and peace, but there is reason to stop, look and listen. It is time for us to take stock and examine well our foundations. To better fit ourselves to grapple with the big problems of government we ought to recur frequently to the fundamental principles on which this government rests. We find ourselves at the beginning of the twentieth century the possessors of the greatest heritage ever given to man by man. We are what we are because our fathers and mothers were what they were. We can no more ignore or change our parentage than we can ignore or change the physical structure of our continent. We are descended from men who have struggled for and in a measure enjoyed freedom for more than a thousand years. Because of the 3,000 miles of ocean which separated the colonies from the mother country, we may certainly say that we have had no master but ourselves since the settlement and colonization of the New World. Never did a people have such leaders as did this country in its founding. When we look at the immortal names of Washington, Jefferson, Hamilton, Madison, Marshall, Storey, and scores of other giants of those days whom Providence seems to have raised for the purpose, we can readily understand how our scheme of self-government proved not to be an idle and visionary dream, how those men put the checks and balances in the frame work that made it workable, how they studied the lessons of history and steered us between the dreaded Scylla of despotism and the whirling Charybdis of the mob into the open but uncharted sea of a representative democracy. Never in the tide of time have such men, such a country, and such an opportunity met. One cannot study the history of the miraculous growth of this nation without feeling that Providence ordained that men of this type should have the opportunity to settle and develop the vast country we inhabit. As long as that element of our population, which has been purified by generations of residence and service on American soil, predominates, every tendency will be toward a safe and practical government. To them, self-government is second nature, and their natural instincts are right. Their heredity is all in favor of our institutions. Not many of them can be led away by false teachers.

So much has been said of democracy in the last few years that there is a tendency to tear down the checks and balances erected by our forefathers and to establish in this country the dangerous doctrine that the majority is all-wise and cannot err. Our fathers watched with jealous care this tendency and made careful provision for the protection of the fundamental rights of the minority. They knew the dangers and the uncertainties of the temporary whims and wishes of an uncontrolled majority, and sought to establish a course that would save us from our own follies. The form of government they established was the golden mean between an autocracy and a pure democracy. They provided for the direct election by the people of the popular branch of the legislative department and for the indirect election of the senators by the several state legislatures and of the President by the electoral college. In order to remove the judiciary entirely from the influence of temporary majorities, they provided for the appointment of members of the Supreme Court and all minor federal judges. History taught them that people under a monarchial form of govern-

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ment are underfed and undernourished, that their aspirations are starved and their individuality and initiative killed. They had also seen that citizens of a pure democracy were gluttons of liberty, were overfed and sluggish. The experience of the ages has taught that extremes are always dangerous, and that they are fundamentally so in government. The standard form of government established by our experiment is the representative democracy. Our government is new in practice, but not in theory, for before we declared our independence and framed our Constitution the theory had been working itself into the mind of man for many ages. Our experiment has been so successful that all the world is emulating our example.

The experience of a few years of independence showed our fathers that this nation could not endure except that a strong central government be established. Though but ten years had passed after the Declaration of Independence was signed, few of the leaders among those who signed that historic document were delegates to write the new Constitution. Some refused to be a party to organizing a strong central government and others were not considered suited to such a task. The thoughtful people had had enough of chaos and uncertainty and wanted unity and strength. For four weeks after the convention met in Philadelphia the delegates debated and discussed the form of government, and not a line of the Constitution had been written. Before the Constitution began to take form the delegates had to abandon the idea of a league of friendship between sovereign states and build on the firmer principle of sovereignty of the people. The results are familiar to all of us. Pitt, one of the greatest statesmen England ever produced, said of the Constitution: "It will be the wonder and admiration of all future generations and the model of all future constitutions." Gladstone, another great British statesman, has said that it was "the most wonderful work ever struck off at a given time by the brain and purpose of man." While these statements may be somewhat exaggerated, they show with what care our fundamental law was written. Gladstone was not strictly accurate, because our Constitution was not "struck off at a given time" on a sudden impulse as a brilliant essay; it was the offspring of a mighty political gestation which had lasted for centuries. This being so, it does not lessen our admiration for the final result. Because Washington, Marshall, Jefferson, Jackson, Lincoln and Douglas were products of centuries of character-making does not abate the fervor of our admiration for their greatness and wisdom. So well did our constitution-makers build that it has served our purposes for 134 years. How well they knew that it was not the function of a constitution to control the personal habits or behavior of the people!

The plan of the constitution-makers provided for a union of sovereign states and reserved to the federal government only such power and authority as were necessary to preserve and maintain national unity. To make the union effective, it was necessary to make it indissoluble. The first attempt at secession was promptly put down in 1833 by that noble soldier, loyal citizen and firm President, Andrew Jackson. Later, under the great emancipator, Abraham Lincoln, it was finally and rightly established that the states were inseparable. One of the greatest incidental benefits of the bloody war between the states was the bringing to our people of the realization that a great power had come into being in America. The mingling of blood on well-fought battlefields finished the making of a nation, a new world power.

In contrast to the men of learning and vision and high principle of the early years of our national life we now find infesting the halls of Congress and polluting other high places counterfeit patriots, demagogues and hypocrites. In my opin-

ion, the greatest menace to the continuance of popular government is this particular variety of varmint. He is the curse of both political parties and is found in every department of our government, local, state and national. He is still greatly in the minority, but he is there. These parasites are a lot of unprincipled individuals who use public office to serve their own selfish purposes. They double the burden of the honest, conscientious public official. Their activities are not directed in channels that will help to solve the problems of government, but they are directed to a course that will appeal to temporary popular prejudice and thereby assure their continuance in office. For instance, we see men honored with a place in the greatest legislative body in the world bitterly denouncing the covenant of the league of nations, an agreement of the fifty-one leading civilized nations of the world, on the ground that it would involve us in the political quarrels of the Old World, and behold! two years later we see these same Janus-like individuals advocating the ratification of an old-fashioned military alliance which binds together four great military powers and excludes all other civilized nations of the world. A man might consistently favor both of these treaties, with the hope that the plan would tend to prevent future wars, and he might oppose both or either, but the man who says that the one would involve us in entangling alliances and that the other is entirely free from such an evil is either a knave or a fool. Demagoguery is not confined to the legislative department, for we hear of judges who turn embezzlers loose on the theory that their employers do not pay them enough, and who order witnesses placed under arrest and confined without complaint or warrant because they do not testify to suit the whims of these judicial autocrats. There is no need to continue the illustrations. Every citizen who reads and thinks can multiply many times the ones I have given. The tendency of the times is to encourage these demagogues. After they become sufficiently famous or infamous because of the publicity they receive, they cash themselves for unheard-of prices. The public official who goes along and does his work in an orderly manner and who conducts his office honestly and efficiently as he ought to do, does not attract much attention and he does not get much publicity. He is in the same class as the good citizen of the community. He is doing what people expect him to do and his acts do not make good news copy. There is just one remedy for this evil, and that is that every citizen become a politician. We have more wise men today than we had a century ago, but our wise men are not valued now as wise men were valued then. We have too many political slackers in this country, too many voters suffering from dry-rot. We hear too often of the individual who is successful in his private business, but who is too busy to give any time to the business of the government. Without government there can be no private business, and the time is coming when we will have no government if the decent, respectable citizens do not take time to attend to their public duty. It is glorious to die for one's country and all praise to him who makes the supreme sacrifice, but in our praises for the dead we must not forget that some credit is due him who lives for his country. Unless more people begin to live for their country they will soon have none for which to die. A man or woman who is not interested in politics is not a good American. Apropos to this thought is a quotation from Lincoln: "It is not the qualified voters, but the qualified voters who choose to vote that constitute the political power of the state."

Illinois is today suffering from the disgrace of a political system which has grown up in this state. No individual or present office-holder is wholly responsible for this system and no citizen can shirk his respon-

sibility for its existence. Such a system could not have been established in this intelligent community if the citizenship of Illinois had kept on the job. The spoils of this system have enabled unscrupulous men to build up great political organizations, and it will now be difficult to free the state from their power. But it can be done, and it must be done. We must attract to the political service of the state men and women of the highest type of intelligence and character who have no personal or group ends to serve. There are now too many public officials who consider public office private property. They forget that the appointments belong to the people and that they should be made with a view to public service. Public contracts are let to political pets at extraordinary profit and inferior work is permitted to be done. Jobs are continually being created for the purpose of paying political debts at public expense. This octopus of political corruption must be chained, or the very life-blood of the state and nation will be sucked.

Probably the most dangerous enemy within our gates is the lack of understanding. The breakdown of faith in the underlying principles of government and of conduct has been proceeding with increasing rapidity for at least a quarter of a century. Much of this is due to the passing of the study of ancient classics from the training of present-day leaders and spokesmen. While our fathers were not learned in so many branches as our present-day educated men, they were instructed in the origin and history of human association and of human achievement. They had a background and point of view which enabled them to pass judgment upon the happenings of the day in terms of standards of excellence and achievement that had been well established by human experience. Every school child should be required to study American principles at the sources. A textbook of original sources should be compiled. It should contain, among other things, the Declaration of Independence and the history of its adoption, the Articles of Confederation and the reasons for their failure, the Constitution and the story of the struggle to establish this historic document. They should study the method and purpose of amendment to this Constitution and the dangers of too frequent amendment. In the place of the frills and the bric-a-brac which now adorn our school curriculum should be the great classics of our poets and dramatists and the great orations of our statesmen. Instead of fitting our children to go bouncing through life on rubber tires with jazz music ringing in their ears we should fit them to earn an honest living and to grapple with the problems of government.

With the other fads of the moralists and other intolerant bigots comes the delusion that work is an affliction. This spirit has permeated to a degree all of us. One is sure to bring tears to the eyes of one's listeners when describing the poor workman who has to slave and sweat all day in the shop or in the field and then go home at night and have nothing to eat but food and nothing to wear but clothes. Such rot of course is disgusting when one stops to analyze it. The truth of the matter is that the only happy people in the world are those who get up in the morning and go to work. The people who never work are mostly seekers for trouble and the finders thereof. The only reason all the people on the earth do not go mad and tear each other to pieces is because they have to work for a living. The only people in this world who amount to anything and who deserve the association of honest men and women are those who work. Every person who works is necessary to the well-being of his community, and if he does his work well and performs his duties as a citizen honorably, he is a success. There are only a few people in this world who do not work. They are the parasites of the human race, the boils on the neck of the body politic. They are the lounge lizards and the parlor bolsheviki at one end of the garbage heap

of life, and the bums and the vagabonds at the other end. Both are parasites from choice. Both are the victims of the delusion. Neither of them has learned that work is a privilege and a blessing and that all happiness finds its basis in work.

Some of these idlers have organized themselves and are seeking in this country to establish a form of government that denies the right of property. One of the fundamental ideas of American life is the right of private property. Most Americans are both capitalists and laborers. Their livelihood comes partly from what they earn in their daily activities and partly from the returns of what they have been able to accumulate and save. Those among us who have no property aspire to get some and will not be content with any scheme which removes incentive, kills initiative, and induces a spiritless level of moribund mediocrity in man and life. What can be one of the most useful organizations to combat this false and vicious movement is the labor union. The communist hates honest labor organizations as bitterly as the bigoted capitalist hates them. The labor unions are neither to be despised nor feared. They should be kept usefully at work. They furnish effective agencies for properly influencing and expressing public opinion. But to be effective agencies for good they must look well to their leadership, they must free themselves from the ex-convicts and the agitators. This I am confident honest labor will eventually do.

One of the most dangerous tendencies of present-day governmental changes is the breakdown of the doctrine of the common citizenship in a representative democracy before the increasingly sharp division of our citizens into groups with accompanying group interests, group ambition and group power. The division of society into groups or classes is no new thing. It is as old as civilization. The aim of liberty and the ambition of our fathers have been to get away from it. The division of society into classes has crippled the political institutions of earlier governments and has worked their ultimate destruction. The American form of government is in danger whenever a group of men endeavors to operate it in the interests of a section of the country or a group of the citizens. So long as political parties divide on questions of political principle and political policy they are not only helpful and constructive, but essential to the life of a republic. The moment, however, that parties are based on sectional interests or jealousies, upon group consciousness, or upon the desire for group advantage, that moment they are out of step with the spirit of America. A labor party or a farmers' party is as undemocratic and as un-American as an employers' party or a bankers' party. There is need for plain speech on this subject. A man who, in the exercise of his duty as a private citizen, or who, in public office, places the interests of any party above the interests of the whole is both unworthy and unable to perform the duties of American citizenship or to serve the American people.

"Crime in the United States has reached appalling proportions and unless it is checked, anarchy will result", says the committee of the American Bar Association appointed to inquire into the cause of the crime wave and to suggest a remedy. A similar report has been made by many other commitees of equal high character. We ought then to begin thinking about this question of handling the criminal. A discussion of the problem is not within my subject, but I do want to say that there has been so much misplaced sloppy sympathy mixed with the application of the lawful force of government in many communities that the criminal has lost his fear of punishment. Principles of honesty, humanity and justice which govern the conduct of ordinary citizens have no place in the mind of the criminal. He understands but one influence and that influence is force. He arms himself and goes out to rob and to kill, and the only way to meet

his campaign is to meet it by the prompt use of the force of government and make his punishment certain and immediate. There has been too much mollycoddling of the less than one-third of one per cent of the population which is criminal. If the well-meaning citizens who waste their sentiment on the criminal will use that sentiment in alleviating the grief of the widow and orphan of the murdered man, the government's fight against crime will be materially aided. We have continued to provide criminals with music and flowers and libraries and athletics and hot and cold running water and paroles and pardons until what was originally intended as punishment is no longer punishment. We must come to know that the criminal is an enemy of society and that the sooner he is put out of the way the sooner society will be freed from the menace.

Another tendency of the present day is for the government to inter-meddle with every personal activity of the citizen. The use of the power of the state to enforce some particular rule of conduct, which those to whom it appeals describe as moral, may easily differ only in form and not in fact from the long-since abandoned use of the power of the state to enforce conformity in religious belief and worship. Private morals and private conduct are matters for the conscience of the individual and not for regulation by some majority which at best can only be temporary. Equally obnoxious to the true American is the giving of funds by individuals of wealth and by private associations to enforce some particular law or group of laws which they single out from the great body of statutes. If the fortunate possessors of wealth are permitted to secure the exceptionally strenuous enforcement of those laws in which they themselves strongly believe, they might almost as well be permitted to write the laws. If they feel inclined to render a public service, they might prosecute public officials who refuse to enforce equally and without favor all laws.

There is entirely too much government in business and not enough business in government. Private business is stifled by government red tape, and the individual citizen needs to carry a library with him to enable him to keep out of jail. Government job-holders are now stepping on each other's heels and new jobs are being created daily. Twenty-five years ago less than 200 inspectors and investigators were in the employ of the federal government, and now there are more than 30,000 of them. Forty years ago there were 50,000 people employed in the administrative branch of the federal government and now there are a half million of them. State and local governments have padded the payrolls proportionately. If we continue this mania for creating jobs, the job-holders will soon approach in numbers the producers who are taxed to maintain them. Lincoln truly said on the day of his assassination that commissions were "contrivances to cheat the government."

Probably the greatest single menace to the continuance of our form of government is the tendency to abolish the autonomy of the state and to establish in its stead an unrestrained centralized national government. Wise and patriotic men of all political parties are viewing with alarm this tendency and are vividly conscious of the fact that its accomplishment means the destruction of the liberty of the citizen and of the life of the republic. In this country the fountain of all authority is the citizen. The individual is surrounded by the town, the county, the state and the nation, like so many concentric circles, and each in proportion to its nearness to the citizen was, by our fathers, invested with the greatest possible jurisdiction. Each served a double purpose. It prevented the encroachment of one citizen upon the right of another, and presented between all and the ambition of a tyrant a series of stubborn barriers, each of which must be demolished before the liberties of the people could be engulfed in a national despotism. Then and now, between the tyranny of centraliza-

tion and the freedom of the citizen stands the integrity of the state. The question of the right of a state to secede has been clearly and finally decided. To grant that right meant the destruction of the union. What I am contending for is the right of the state to exist, the maintenance of "an indissoluble union of indestructible states." For a century after the adoption of the Constitution, sages and patriots stood watch and guard against the imminent and admitted peril of federal aggression. Washington said: "Let there be no changes by usurpation, for this, though it may in one instance be the instrument of good, is the ordinary weapon by which free governments are destroyed." Lincoln said: "It is my duty and my authority to maintain inviolate the right of the states to order and control under the Constitution their own affairs by their own jugment exclusively. Such maintenance is essential for the preservation of that balance of power on which our institutions rest." Marshall, that extreme nationalist, said: "No political dreamer would ever be wild enough to think of breaking down the lines which separate the states and of compounding the American people into one common mass." We are fast getting away from the fundamental idea that each community should solve its own police problems and are resorting too often to the cowardly cry for help from the state or national government before we have made an effort to help ourselves. Whenever you make a centralized government, and not the citizen, the source and repository of all power, you have abolished the Constitution of the United States. Burke wisely said, "all innovation is not progress", and so we should guard against the ingenious inventor of new ways and means of invading the vested rights of the states and the liberties of the citizens. The appetite for attending to other people's business grows by what it feeds on, and America must awaken from its lethargy or this hundred-headed bureaucratic monster will devour us. As we have grown great, as this nation has assumed world leadership, so have our problems of government increased. The big question today is, Are We, the American people, big enough to meet and solve these problems?

My countrymen! How precious this great gift of our forebears! How valuable the natural resources of our nation! How mighty its rivers! How fertile its fields! How abundant its forests! How rich its mines! And more, with what wisdom and foresight was this great government of free men conceived and builded on this continent as a standard for all the people of the earth! How precious the thought that we are citizens of the only nation that has a birthday, knows when it is, and celebrates it! How beautiful and symbolic is our national emblem, the first flag ever created to represent a people, a flag that has never led our soldiers in a war of oppression, and yet one that has repeatedly unfurled itself in crusades of mercy, a flag that strikes a chill to the hearts of tyrants and that stirs anew the life-blood of the human family! The red of this flag represents the precious blood of our fathers who gave us this nation, the blood of the patriots who preserved for us this nation, and the blood of the boys who gave the world this nation. The white of this flag represents the purity and the beauty of character of the women who bore the sons of America and who sacrificed them that this nation might live. The blue of this flag represents the loyalty to principle and the devotion to ideals of the citizenship which made this country possible and which has enabled this government of free men to endure. This flag has successfully repulsed the assaults of domestic and foreign enemies, it has never known surrender and, with God blessing our people with continued wisdom and courage, it never will.

INSURANCE—AUTOMOBILE.

FIREMEN'S FUND INS. CO. v. HALEY.

92 So. 635.

Supreme Court of Mississippi Division B, June 26, 1922.

Where an insurance policy provides for the payment to the insured of a certain amount of money for which the assured shall become liable to pay as damages for property injured or destroyed through collision of his automobile with another automobile, the insurance company is liable under this policy for the value of the automobile destroyed in a collision between the automobile of the insured and that of another party, though the insured be running his automobile at the time of the collision at a speed in excess of that allowed under the state laws, where there is nothing in the policy exempting the insurance company from liability because of the violation of these laws.

E. L. Mounger, of Greenwood, for appellant.

C. L. Lomax, of Greenwood, for appellee.

SYKES, P. J. The appellee sued and recovered a judgment against the appellant insurance company for $1,000 and interest from April 15, 1918, at 6 per cent, making the total amount of the judgment $1,190, from which judgment this appeal is here prosecuted. The insurance policy in this case, among other things, "covers sums which the assured shall become liable to pay for damage to property * * * through collision of the automobile herein described with any other automobile. * * * This company shall not in any event be liable under this provision for more than the actual value of the property destroyed * * * or for a greater sum than one thousand ($1,000) dollars * * * on account of any collision." The policy also provides how proof of loss shall be made out, and then provides "and the sum for which this company is liable, pursuant to this policy, shall be payable sixty days after the notice. * * *"

(1) The declaration charges and the testimony shows that on April 15, 1918, while appellee was driving on a country road at a rate of speed testified to by him and his witnesses to be about 25 miles an hour and estimated by some others as exceeding this limit, either as he was starting over or just before reaching a bridge, his car collided with the car of Mr. Heathman, practically destroying the Heathman car; that immediately thereafter he gave the proper notice in accordance with this policy to the insurance company of the collision; that some time thereafter Mr. Heathman sued him for $5,000 actual and punitory damages and recovered a judgment against him for $1,000; that in the trial of this case his attorney was assisted in the defense by the attorney of the insurance company. There were various and sundry special pleas filed to this declaration by the insurance company which it is unnecessary to set out in detail. The statutes of this State make it unlawful to exceed 30 miles an hour upon a country road (Section 5775, Hemingway's Code), and to go upon or approach a bridge at a rate exceeding 10 miles an hour. In this case the Court instructed the jury on behalf of the defendant that, if the defendant was exceeding the speed of 30 miles an hour, they must find for the defendant, but declined to instruct the jury that, if he was approaching the bridge at a rate of speed of over 10 miles an hour, they should find for the defendant. We think the instructions for the defendant were more liberal than it was entitled to under the law. Even if the plaintiff were exceeding either the 30 or the 10 mile speed statute in this case, and thereby violating both of these statutes, this would not prevent him from recovering upon this policy. There is no provision in the policy providing for non-liability in case at the time of an accident the insured is violating the speed laws of the State. It is "hornbook" law that these insurance policies which are prepared by the insurance companies are to be most strongly construed against them and in favor of the assured, and, where there is no provision in them exempting it from liability, the mere fact that these statutes may have been violated is no defense.

There is no contention in this case that the appellee deliberately ran into the car of Mr. Heathman.

There is nothing in the terms of the policy contrary to or violative of any public policy of the State. It is a perfectly valid contract of insurance and does not exempt the company from liability for a violation of the speed laws. It is a contract of absolute liability in cases of collision. The company sets up as a defense an independent collateral matter, viz., the violation of the speed law. Upon this question we think the case of Messersmith v. American Fidelity Co., 187 App. Div. 35, 175 N. Y. Supp. 169, announces the correct principle of law. In that case the insured was violating the law by having an infant drive his car at the time of the collision. The Court, in holding the company liable, in part said:

"Here the contract on its face is perfectly legal. It does not purport to indemnify the plaintiff against damages growing out of the

performance of an illegal act. * * * The plaintiff in this case, to make out his cause of action, was not required to prove any unlawful act. In fact, all of the material allegations of the complaint are admitted, and the defendant seeks to escape the liability which the policy places upon it by an independent, affirmative defense to the effect that at the time of the accident the automobile was being driven by a boy under 18 years of age in violation of law.

"'An obligation will be enforced, though indirectly connected with an illegal transaction, if it is supported by an independent consideration, so that the plaintiff does not require the aid of the illegal transaction to make out his case.' * * *

"It seems to me that there is an attempt in this case to connect distinct and independent transactions, and to inject into the insurance contract, which was fair and legal in itself, the illegal feature of the other independent transaction.

"The independent legal contract of insurance, founded upon a good and valid consideraiton, was not made void by an incidental violation of the Highway Law. The violation of the statute was an entirely distinct and disconnected act. The issuing of the policy and the violation of the Highway Law were in no way connected. The issuing of the policy did not lead to the violation of the Highway Law in any way, it was not intended to aid or encourage such violation of the law. * * *"

If such a defense were permissible in this State, automobile insurance would be practically valueless.

It is also contended by the appellants that the Court should not have permitted the introduction of the judgment in the Heathman case. This policy, however, expressly covers "damages which the insured shall become liable to pay. * * *" This Heathman judgment was for damages which the appellee became liable to pay by virtue of the judgment. We know no better way to prove a liability than by introducing the judgment showing it.

(2) It was also contended that the suit was for actual and punitory damages, and that it cannot be said that the judgment for $1,000 was only for the actual damages. Upon this question, however, it will be borne in mind that the amount sued for was $5,000, the amount of the recovery was $1,000, and the uncontradicted testimony showed that the Heathman car was a total wreck, was practically a new car, having been driven only from 2,000 to 3,000 miles, costing originally $1,500. There was no testimony whatever controverting this proposition. Consequently the jury were inescapably driven to the conclusion that the $1,000 was only for actual damages. It was error, however, in this case to allow interest from the date of the collision. As will be noted from the terms of the policy above set out, the insurance company is allowed 60 days after the proof of loss within which to pay this claim. The collision occurred at night. The testimony shows that notice was immediately given the company. We conclude from this that notice was given the next day, April 16, 1918. The company then had 60 days, or to June 16, 1918, to pay this $1,000. It was not in default until the expiration of the 60 days, and therefore is not liable for interest before June 16, 1918. In other words, the judgment of the lower court is excessive to the amount of two months' interest on $1,000 at 6 per cent per annum, which amounts to $10. Which judgment will be corrected in this court.

Affirmed, with remittitur.

NOTE—*Validity of Automobile Insurance Covering Loss Sustained While Violating Speed Law.*—Automobile insurance has been held valid in the cases of American Fidelity Co. v. Bleakley, 157 Ia. 442, 138 N. W. 508; Messersmith v. American Fidelity Co., 187 App. Div. 35, 175 N. Y. Supp. 169; Gould v. Brock, 221 Pa. 38, 69 Atl. 1122; Taxicab Motor Co. v. Pacific Coast Casualty Co., 73 Wash. 631, 132 Pac. 393.

Likewise a policy which indemnified against loss sustained in consequence of the violation of a speed statute was held to be valid. Taxicab Motor Company v. Pacific Coast Casualty Company, 73 Wash. 631, 132 Pac. 393. In this case the Court said: "Undoubtedly a contract indemnifying another against consequences arising from wilful violations of a statute, or from the commission of crime generally, committed by the assured himself, is void for the reason given, but one may lawfuly insure another against the consequences of such acts committed by his servants and employees, if such acts are not directed by or participated in by the assured."

"There was a time when all insurance, and especially of life, was looked upon with suspicion and disfavor, but it was only because regarded as a species of wagering contract. That time has long gone by. And with the intelligent study of political economy bringing the recognition of the fact that even the most apparently disconnected and sporadic occurences are subject to at least an approximate law of averages, the insurance against loss from any such occurrence has been recognized as a legitimate subject to protection to the individual by a guaranty of indemnity from some party undertaking to distribute and divide the loss among a number of others for a premium giving them a prospect of profit." Gould v. Brock, 221 Pa. 38, 69 Atl. 1122.

"Since you were only drinking 2.75 beer," said the judge, "I'll merely fine you $2.75."

"T'anks, yer honor. I'm glad I wasn't drinking XXX."—Life.

ITEMS OF PROFSSIONAL INTEREST.

UNIFORM DIVORCE LAW IN THE UNITED STATES.

Among the many useful activities undertaken by the American Bar Association, a body which resembles more closely the Law Society than it does any other body in this country, has been that of drafting uniform statutes in various branches of the Criminal Law and the Common Law, which it recommends for adoption to the Legislatures of the various States in the Union. Within the last month the Association has just adopted a Divorce Statute for the introduction of which into these forty-eight Legislatures it is now arranging. It has also been fortunate in obtaining the support, generally speaking, of the various central societies of women delegates recently formed in America and now very active. The difficulties in the path of the new uniform measure are two-fold. It recognizes only five grounds of divorce and therefore is asking the great majority of the States to assent to a great curtailment of their present facilities. This, however, is in harmony with the tendency of enlightened opinion in the States. There, divorce reform has an exactly opposite meaning from its significance in England, just as Tariff Reform is a free trade movement in America and a protectionist movement in Britain. Again, the proposed law is too wide for a few of the old-fashioned States, chiefly found in New England and in the South, which still place restrictions in the way of divorce almost as great as those in England. Should the reformers, however, succeed in getting this draft Bill adopted in three-quarters of the States, an attempt would then be made, as in the case of Prohibition, to secure a constitutional amendment transferring from the States to Congress the sole jurisdiction to legislate on divorce, and to the Federal Courts the sole right of pronouncing divorce decrees. The latter transfer would be essential to the attainment of any real unanimity; for, if the legislative powers were transferred to Congress while the State judiciaries administered the law, recalcitrant States would probably mis-interpret the Act in ways which would indirectly restore the present chaos.—*Solicitors' Journal* (Eng.), Dec. 2, '22.

PROVISIONS OF THE PROPOSED UNIFORM DIVORCE LAW.

It is interesting to note that the provisions of the proposed uniform divorce law, as approved by the women's societies of America, bear a close resemblance to the suggestions of the majority report in Lord Gorell's Commission. Adultery on the part of either sex, incurable lunacy, imprisonment for a lengthy term, desertion for one year, "gross and inhuman cruelty": these are the grounds in respect of which it is proposed that a divorce should be granted. The Association are naturally opposed to the antiquated abuse, still retained in New York State, which forbids the re-marriage of the guilty divorced party. Desertion for one year seems a short term on which to found the annulment of a marriage; Lord Buckmaster's Bill suggests two years, the Scots Law requires four years, and most Continental systems adhere to five. "Gross and inhuman cruelty" is in practice likely to be whittled down so as to mean very little when a wife sues her husband: this ground already exists in some Western States where, under this law, a wife has obtained a divorce because a husband would not provide her with a motor car, and refused her more than $5,000 dollars a year for housekeeping expenses! In fact, the difficulty in the way of defining "cruelty" and "desertion" so as to avoid the present lax interpretation of those terms, is everywhere a standing problem for the reasonable and moderate divorce reformer. —*Solicitors' Jounrnal* (Eng.), Dec. 2, '22.

DUTY OF LAWYER TO KNOW LAW

"In a recent New York case a lawyer was held liable for damages exceeding $7,000 for failing to ascertain the law of another State as to chattel mortgages and in consequence drawing an instrument which turned out to be void. 'God forbid that it should be imagined that an attorney or a counsel or even a judge is bound to know all the law.' Montriou v. Jefferys, 2 C. & P. 113. On the other hand it has been well said: 'An attorney has no right to be a clam and shut himself up in the seclusion of his own self-conceived knowledge of the law. He must keep pace so far as reasonable diligence and a fair amount of common sense will enable him to do so with the literature of his profession and what the courts have decided.' Hill v. Mynatt (Tenn.), 59 S. W. 163. There is, however, at least one decision that a lawyer is not bound to know the law of another State. Fenaille v. Coudert, 44 N. J. L. 286. In that case it was held that a New York attorney employed to draw a contract for the erection of a building in New Jersey was not liable for failure to know that under the law of New Jersey it was necessary to file it to gain protection from liens of workmen and materialmen."—"Law Note" for August, 1922.

DIGEST.

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Automobiles**—Admissions.—In an action to recover for injuries sustained in a collision by two automobiles, evidence of compromises and settlements with other parties injured in the same accident is not admissible, unless they contain admissions of fact.—Hanks v. Yellow Cab & Baggage Co., Kan., 209 Pac. 977.

2. Agency.—An owner of an automobile maintained for the convenience of his family is liable to third persons for injuries caused by the negligence of his minor son using the car with express or implied consent.—Allison v. Bartelt, Wash., 209 Pac. 863.

3. License.—Acts 1919, p. 442, § 366, provides that the auto license tax due, under section 361, on October 1st, is not delinquent until November 1st, and hence, where a collision of which plaintiff complained occurred on a highway on October 19th, he was not a trespasser violating section 367, making it a misdemeanor to do any act for which a license is required, and he could sue for damages to his auto.—Hudgens v. Boles, Ala., 93 So. 894.

4. **Bankruptcy**—Claims.—The proof and allowance of a claim in a definite sum as one founded on contract does not necessarily indicate such election on part of creditor as will deprive it of right to sue bankrupt in proper court and proceeding for damages sustained through actionable deceit in obtaining credit.—In re Natow Bros., U. S. D. C., 283 Fed. 522.

5. Conditional Sale.—In Illinois, a seller who, though parting with possession of the property, reserves in himself the title, may assert it against creditors of the buyer, except such as while the property is in the buyer's possession, have levied attachment or execution thereon; so that, the seller having regained possession before any such levy, his title will prevail as against the execution or attachment, or bankruptcy proceedings against the buyer having the effect of such a levy.—In re Thomas Electric Corporation, U. S. C. C. A., 283 Fed. 392.

6. Conditional Sale.—A written contract of conditional sale, executed within four months prior to bankruptcy, covering property previously purchased without an agreement for reservation of title, held void as a transfer of property of bankrupt to secure an antecedent debt.—In re Thomas, U. S. D. C., 283 Fed. 676.

7. Partnerships.—A partnership dissolved by the death of a member, and whose affairs have not been finally settled, is subject to be adjudged a bankrupt. Bankruptcy Act, § 5a (Comp. St. § 9589).—In re E. W. Adams & Co., U. S. D. C., 283 Fed. 431.

8. Petitions.—That an amended petition, stating more fully acts of bankruptcy alleged in the original petition, also alleges new acts of bankruptcy, is not ground for its dismissal.—In re Boulder Milling & Elevator Co., U. S. D. C., 283 Fed. 683.

9. Preferred Claim.—Where bankrupt converted stock belonging to claimant, the latter has a preferred claim on the proceeds derived therefrom, which are in trustee's hands, as trustee secured no better claim than bankrupt would have had.—In re Clement D. Cates & Co., U. S. D. C., 283 Fed. 546.

10. Priorities.—Where claimant was employed by bankrupt corporation as "manager and buyer and saleswoman," and no apportionment was made, or attempted to be made, between what was due her for services as manager, and what was due for services as buyer and saleswoman, she was not entitled to priority as to any portion of wages due under Bankruptcy Act § 64b(4), being Comp. St. § 9648.—In re Ye Ladies Shoppe, U. S. D. C., 283 Fed. 693.

11. Securities.—Where stock brokerage firm placed securities belonging to its clients with its correspondent as collateral security, and the securities were sold by the correspondent, and the fund in the hands of the firm could not be identified as the proceeds of such sale on bankruptcy of firm, the owners were not entitled to priority of payment.—In re Clement D. Cates & Co., U. S. D. C., 283 Fed. 541.

12. Title by Entirety.—Where title is held as tenants by the entirety, no part of the property or interest therein of one of the tenants passes to his trustee in bankruptcy, under Bankruptcy Act, § 70a(5), being Comp. St. § 9654, since the title itself is not capable of division into separate interests, undivided or otherwise, but is one entirety, entirely owned by each tenant.—M'Mullen v. Zabawski, U. S. D. C., 283 Fed. 552.

13. Transfer.—In view of Bankruptcy Act, § 1a, cl. 25 (Comp. St. § 9585), defining "transfer" as including the sale and every other mode of disposing of, or parting with, property, etc., a chattel mortgage was a "transfer," within section 60b (section 9644), relative to preferences.—In re Pingel, U. S. D. C., 283 Fed. 664.

14. **Banks and Banking**—Agency.—A bank cashier, knowing that a partnership exists, is not guilty of negligence because he honors checks against the firm account when he knows that the money of the account so paid out was raised by discounting a personal note of one of the partners, particularly where the negotiations relative to the note and its presentment for discount were carried out by the drawer of the checks as ostensible agent for his partner, with the apparent purpose of raising partnership funds.—Crutchfield v. Rowe, N. C., 114 S. E. 301.

15. Authority of Cashier.—A promise of a bank cashier to a depositor from whom he purchased an automobile to deposit sufficient funds in the depositor's account to make good depositor's check for the amount of the price of the automobile was void, being in effect an unauthorized promise to loan such amount from the bank's funds without note, security, or payment of interest.—Bank of Proctorville v. West, N. C., 114 S. E. 178.

16. Authority of Officer.—An officer of a bank may not, without privity of any other officer or agent, bind the bank by inserting in his note to it the words: "This note was given for assessment on stock, and is payable out of the earnings thereon."—Stockyards State Bank v. Frank, Kans., 209 Pac. 985.

17. Notes.—An arrangement concerning business tranactions between one who is the president of a bank and the maker of a note to the bank for an indebtedness to it cannot be used as a defense to defeat the bank's right to recover on the note where the business transactions between the president of the bank and the maker of the note are wholly outside the matters for which the note is given.—Home State Bank v. Hogard, Kans., 209 Pac. 973.

18. Privity of Contract.—Payee, who deposited checks with one bank, had no cause of action against other bank, with which they were deposited in the usual course of business for collection; the payee and such other bank being strangers.—First Nat. Bank of Denver v. Federal Reserve Bank of Kansas City, Mo., U. S. D. C., 283 Fed. 700.

19. Trust Funds.—Where testamentary trustees deposited a trust fund in their names as trustees with the trust company designated by the will, and received a certificate of deposit in their names as trustees, the trust company was under no duty or obligation to inquire as to the terms of the trust and refuse to permit withdrawals not in strict compliance with its terms, in the absence of any knowledge or information on its part of the terms of the trust, of any participation in the disposition of the trust moneys, or any advantage derived by it from the trustees' withdrawal of the deposit.—Clifford v. United States Trust Co., N. Y., 196 N. Y. S. 392.

20. Unjust Enrichment.—Where a New York bank agreed with plaintiff to open an account in his name in its Russian branch and to pay him the amount thereof through such branch, the fact that revolutionists compelled it to close up its Russian branch and seized its property in Russia did not excuse performance, where it did not even appear that it kept in Russia any more rubles or securities because of the agreement than it would otherwise have done, or that its failure to pay plaintiff would not result in its unjust enrichment, as it had no property of plaintiff's which could be seized, but was under an obligation to plaintiff.—Sokoloff v. National City Bank, N. Y., 196 N. Y. S. 364.

21. **Bills and Notes**—Negotiability.—A provision in a promissory note to pay exchange and collection charges does not take it out of the class of negotiable instruments under the Negotiable Instruments Act.—First Nat. Bank v. Carey, Minn., 190 N. W. 182.

22. Notice.—Allegations of answer in action on notes by holder in due course that plaintiff knows that defendants have a good and valid defense to the notes, and that plaintiff knows that the defense is based on the fact that the payee failed to comply with the contract with defendants, presented no defense to the action, unless plaintiff at the time the notes were negotiated had notice of some infirmity in the notes or defect in the title of the person negotiating them, as it is no defense that a holder in due course afterwards acquired knowledge of such infirmity or defect of title.—Gibson v. First Nat. Bank of Richmond, Ind., Ky., 244 S. W. 290.

23. **Brokers**—Jurisdiction.—Where a contract, employing plaintiff to find a purchaser for a British steamship, was made in New York, and nothing was said as to where the ship then was, what flag she carried, or what law was to govern the transaction, it was governed as to its validity and operation by the law of New York.—McKee v. Gratz, Sup. Ct., 43 Sup. Ct. 18.

24. **Carriers of Goods**—Delivery.—Where an interstate shipment was made under an order notify bill of lading, and on presentation of the bill of lading by the buyer, properly indorsed, delivery was made by the carrier, the fact that the shipment was turned over to a public warehouse at the buyer's orders, and carrier retained warehouse receipts to secure freight charges, could not, and the fact the notify party afterwards refused to receive the shipment did not, affect the question of delivery, which was then complete.—Northern Milling Co. v. Davis, Wis., 190 N. W. 351.

25. **Carriers of Freight**—Damages.—Where, in an action for damages to a shipment of seed peas, the complaint was on the theory that plaintiff was entitled to the value of the peas at the point of delivery, if carried and delivered in good condition, less their actual value as tendered for delivery, having accepted the consignment in its damaged condition, he cannot recover freight, demurrage and warehouse charges.—Feelyater v. Chicago, M. & St. P. Ry. Co., Wis., 190 N. W. 193.

26. **Chattel Mortgages**—Priorities.—Where mortgagor of an automobile continued in possession of it, though he had defaulted in payment, a garage keeper, storing the automobile and performing work on it at mortgagor's request, secured a lien on it superior to mortgagor's claim, under Lien Law, § 184, giving garage keepers a lien for storing or repairing motor vehicles at request or with consent of owner, whether such owner be a mortgagor remaining in possession or otherwise.—Willys-Overland v. Prudman Automobile Co., N. Y., 196 N. Y. S. 487.

27. **Commerce**—Interstate.—Where an interstate shipper's intention at all times was that cars should be sent to M., and they were billed to O., possession taken there, and the cars rebilled to M., without any intention other than a mere possibility that the interstate journey should end there, the intention as carried out determined as matter of law the essential nature of the movement, and made the entire movement from the original point to M., an interstate shipment.—Baltimore & O. S. W. R. Co. v. Settle, Sup. Ct., 43 Sup. Ct. 28.

28. Statute.—In determining whether a federal statute has superseded a state enactment, its entire scope and purpose must be considered, and that which needs to be implied within its statutory scope and intent is of no less force than that which is expressed in the act; and, when so considered, if the federal statute in its chosen field of operation will be frustrated and its provisions refused their natural effect, the state law must yield to the federal law within the sphere of its delegated and assumed authority.—Levy, Aronson & White v. Jones, Ala., 93 So. 733.

29. **Constitutional Law**—Administrative Duties.—Federal Water Power Act,— creating the Federal Power Commission, with authority to regulate dams and reservoirs on navigable streams, and to grant to licensees authority to construct dams on navigable streams, with the right to the surplus water at the weir not necessary for navigation as compensation for outlay in construction of dam, held not unconstitutional, as against the contention that it constitutes a delegation of legislative functions to the power commission rather than the bestowal of administrative duties.—Alabama Power Co. v. Gulf Power Co., U. S. D. C., 283 Fed. 606.

30. Boundary Lines.—Crawford & Moses' Dig. § 2869, providing that, where a crime is committed on the boundary line, an indictment may be returned and trial had in either county, is a valid exercise of the legislative power.—Bottom v. State, Ark., 244 S. W. 334.

31. **Contracts**—Fraud.—Where grantor conveys land expecting payment, if at all, from third party, and not from grantee, the grantee will not be required to pay therefor on the theory of an implied contract unless such expectation was superinduced by fraud.—Consolidation Coal Co. v. King, Ky., 244 S. W. 303.

32. Illegal.—While contracts in general restraint of trade are against the policy of the law and cannot be enforced, the contract in controversy here is not in general restraint of trade, being one for the shipment of goods of a certain character to named factors solely during a specified time, and providing a penalty for failure to comply with the terms of the contract.—Barnes v. Downing Co., Ga., 114 S. E. 223.

33. **Corporations**—Estoppel.—Where a corporation was accustomed to borrow money from banks on indorsement of its directors, and acting on decision of the directors, an agent negotiated a loan from plaintiff, stating that the note would be indorsed and that the directors would be responsible for its payment, and the directors knew that the money loaned was being obtained on the note of the corporation, which was insolvent, and knowing that plaintiff was promised and was expecting to receive as good security as the banks had been receiving, such misrepresentations were made as to render the directors personally liable.—Harper v. Oak Ridge Supply Co., N. C., 114 S. E. 173.

34. **Criminal Law**—Search and Seizure.—Where defendant had driven his automobile containing intoxicating liquor upon public fairground where

the county fair was in progress, in violation of the prohibition laws, police officers had a right to search the automobile for liquor without a search warrant, notwithstanding Const. art. 2, § 10, forbidding unreasonable search and seizure; and the liquor so seized was admissible in prosecution of defendant for having possession of intoxicating liquor.—People v. Case, Mich., 190 N. W. 289.

35. **Damages**—Negligence.—Punitive damages are not recoverable for simple negligence.—Bradley v. Walker, Ala., 93 So. 634.

36. **Deeds**—Signature.—An instrument purporting on its face to be a deed, and concluding with the words, "Witness the following signature and her seal," and signed, "Malissa x Hawkinberry - - - - mark Witnesses: A. T. Satterfield, Smith Hood, Jr.," will be construed as a deed investing legal title in the grantee. In such a case the hyphens following the signature or name of the grantor will be treated as intended for and adopted by the grantor as his seal.—Hawkinberry v. Metz, W. Va., 114 S. E. 240.

37. **Divorce**—Cause of Action.—Where, after approximately 12 years of marriage, during which time husband and wife lived together as such, the husband sued to annul the marriage as illegal, and by his complaint defamed the wife in her good name and reputation, and charged in effect that she had lived in illicit relations with him during the years of their marriage, and that she had never been in fact married to him, this was an act of extreme cruelty.—Owen v. Owen, Wis., 190 N. W. 363.

38. **Eminent Domain**—Damages.—Where a river was floatable in its natural state in a commercial sense, a riparian owner of timber land, who used the river for the purpose of getting logs to market was entitled to substantial damages where condemnation will involve diversion of waters on construction of hydro-electric generating plant.—City of Tacoma v. Olympia Door Co., Wash., 209 Pac. 836.

39. **Execution**—Surety.—Sureties on supersedeas bond executed by defendant appealing from judgment for plaintiff, having made themselves parties to the suit by entering into appeal bond, are defendants within the statute relating to stay of execution in the hands of an officer.—Morse Bros. Lumber Co. v. F. Burkart Mfg. Co., Ark., 244 S. W. 350.

40. **Fixtures**—Personal Property.—Where a railway company lays its tracks and erects buildings for the proper conduct of its transportation business over and across land under a claim of right, such property cannot be held to become a part of the realty, but will at all times retain the character of personalty.—Placer County v. Lake Tahoe Ry. & Transportation Co., Calif., 209 Pac. 900.

41. **Frauds, Statute of** — Original Contract.—Where defendant received money from third party under agreement to pay plaintiff's claim against third party, the agreement to pay plaintiff was an original undertaking, and not an oral promise to pay the debt of another within the statute.—Bailey v. Perkins Oil Co., Ark., 244 S. W. 350.

42. Time.—An oral contract is not void under the statute of frauds merely because it does not specifically provide that it is to be performed within a year; the statute applies only where by the terms of the contract it is not to be performed within the year.—In re Griffin's Estate, Neb., 190 N. W. 268.

43. **Garnishment**—Service.—A national bank doing business in a foreign state and upon garnishee's motion in interpleader found to be a necessary party may be served with direct process if found within the jurisdiction, or otherwise by publication.—Temple v. Eades Hay Co., N. C., 114 S. E. 162.

44. **Health**—Police Power.—It is within the police power of a state to provide for compulsory vaccination.—Zucht v. King, Sup. Ct., 43 Sup. Ct. 24.

45. **Homicide** — Indictment. — The jury were properly informed of the statute regulating the speed of automobiles, since the jury could find the existence of conditions in the road to which the statute was applicable. The charge against defendant being that he drove an automobile in a culpably negligent manner and at unlawful speed against a person, causing death, it was permissible to call attention to any law that bore on the alleged negligent driving, even though not specially set forth in the indictment.—State v. Peterson, Minn., 190 N. W. 345.

46. **Insurance**—Attorney's Fees.—Recovery of attorney's fees was not precluded on the ground that insured asked for more than entitled to, where the verdict was for less than amount asked, but credited insurer with an amount previously paid.—National Life & Accident Ins. Co. v. Sherod, Ark., 244 S. W. 436.

47. Contracts.—A guaranty company is liable on its bond insuring the fidelity of an employee, without his signature, when issued upon his application, except in cases where it is positively and specifically provided that no liability attaches without it.—Farmers' Union Grain Co. v. United States Fidelity & G. Co., Neb., 190 N. W. 221.

48. Disability.—A life insurance policy provided that, on due proof that insured had become permanently disabled, so as to be unable to engage in any occupation, the company would waive payment of premiums "during such disability," and would pay insured monthly the sum of $10, the first payment to be made six months after receipt of such proof and subsequent payments monthly "during such disability." Held, that total disability from tuberculosis continuing for a period of sixteen months was a "permanent disability," as "permanent," as applied to human affairs, does not mean for life, but signifies appreciable durability and continuance, as opposed to what is merely transient.—Ginell v. Prudential Ins. Co., N. Y., 196 N. Y. S. 337.

49. Mutuality.—Mutual benefit society's classification of members into two classes, one class to consist of the mortuary benefit members, who were members at the time the rates were increased and such similar members admitted after the increase in rates, on higher rates than such members who had been admitted theretofore, whose certificates were to be valued on an "accumulation basis," and the other class to consist of all mortuary members admitted after such increase, either as new or transferred members, on average higher rates than rates paid by members of first class, whose certificates were to be valued on the tabular basis, and who were required to pay adequate rates with adequate reserves, held improper, under St. 1921, § 1958, subd. 2 (f), authorizing such a society to classify membership, there being no mutuality between members of the first class.—United Order of Foresters v. Miller, Wis., 190 N. W. 197.

50. Waiver.—Insurance company's refusal to arbitrate in accordance with the terms of the policy, or its submission to partial arbitration, constituted a waiver of notice of loss.—Wilson & Toomer Fertilizer Co. v. Automobile Ins. Co., U. S. D. C., 283 Fed. 501.

51. Written Notice.—A condition of a liability insurance policy requiring immediate written notice of an accident held broken when the only notice given was an oral notice given over the telephone.—Farrell v. Merchants' Mut. Auto. L. Ins. Co., N. Y., 196 N. Y. S., 383.

52. **Intoxicating Liquors**—Indictments.—An indictment, charging the unlawful sale of intoxicating liquor in violation of Ky. St. § 2554a1, denouncing the sale of liquor except for sacramental, medicinal, scientific, or mechanical purposes, must allege that the sale of the liquor by the defendant was not for sacramental, medicinal, scientific, or mechanical purposes. — Smith v. Commonwealth, Ky., 244 S. W. 407.

53. Indictments. — Counts in an indictment charging merely that defendants carried on the business of wholesale liquor dealer, retail liquor dealer or rectifier without having paid the special tax are not sufficient to charge the offense of illegal sale or manufacture under National Prohibition Act.—United States v. Remus, U. S. D. C., 283 Fed. 685.

54. Possession.—An allegation in an indictment under Acts 1921, p. 372, § 2, prohibiting the possession of an unregistered still regardless of intention as to its use, that the still was kept for

the purpose of using it in the production of spirits, was surplusage, and did not affect the validity of the charge of possessing.—Earl v. State, Ark., 244 S. W., 333.

55. Possession.—Under Laws 1917, p. 61, § 12, amending Laws 1915, p. 15, § 23, providing that the possession of intoxicating liquor shall be prima facie evidence that the liquor was held and kept for the purpose of unlawful sale or disposition, where accused was arrested while coming down a trail carrying a small cask of liquor in a gunnysack on his shoulders, which he claimed he found while hunting, and was taking it home for his own use, and denied that its possession was for the purpose of sale, the evidence held insufficient to support his conviction as a bootlegger.—State v. Hodges, Wash., 209 Pac. 843.

56. Possession.—In prosecution for being a jointist, in violation of Laws 1917, p. 60, § 17h, instruction that defendant would be chargeable with possession of liquor on his premises though he did not own the liquor, if he had knowledge of the existence of the liquor on the premises, for a sufficient time in which to notify the authorities, but failed to do so, held erroneous; there being no presumption of possession from the mere existence of liquor on the premises with the owner's knowledge, the question being one of fact for the jury.—State v. Brown, Wash., 209 Pac. 855.

57. **Landlord and Tenant**—Liability of Landlord.—As to the tenant, his guests, servants, or others entering under his title, the landlord, in absence of a covenant to repair, is liable only for injuries resulting from latent defects known to him at the time of the leasing and which he conceals from the tenant.—Hallock v. Smith, Ala., 93 So. 588.

58. Rent.—Where a tenant delivered to his landlord two mules in satisfaction of money sent, the landlord, after selling the mules and learning they were mortgaged in excessive amount, though there was no fraud, could cause the mules to be tendered back to the tenant and thereby rescind the rent satisfaction, since there was a breach of title warranty.—Bank of Hartford v. McNeal, Ala., 93 So. 617.

59. **Mines and Minerals**—Contracts.—Where a drilling contract provided for payment of certain sums for each foot drilled, and provided further that, should the formations in drilling show oil or gas in any sand, the contractor agreed to shut down and notify owner, "who shall give instructions about drilling into said formation and during which period of time of testing, cleaning or swabbing the well or pulling the casing or underreaming, or in any other such diversion from drilling caused by party of the first part [owner], is to pay to party of the second part [contractor] $100 per day," the contractor was entitled to compensation for services in underreaming only when requested by the owner.—Eldora Oil Co. v. Thompson, Tex., 244 S. W. 505.

60. Lessee.—Where a landowner sold the land and ⅛ of the minerals, and by agreement between the parties the original owner leased the mineral rights, the lessee agreeing to pay a certain bonus and a royalty of one-eighth of the oil produced, the grantee and his subsequent grantees, who purchased lots on subdivision of the land, were entitled to one-eighth of the one-eighth royalty, and not one-eighth of all the oil produced on the land.—Fulton v. Jackson, Tex., 244 S. W. 566.

61. **Municipal Corporations**—Contracts.—The rule that, where a contract is fully performed, the parties are bound thereby the same as though the contract had been validly executed, is not applicable to a contract for street paving, which was not countersigned and indorsed by the city comptroller, showing that there was sufficient funds to pay expenses, as required by St. 1919, §§ 925—45, 925—93.—White Const. Co. v. City of Beloit, Wis., 190 N. W. 195.

62. **Physcians and Surgeons**—License.—The profession of midwifery is so closely allied to the practice of medicine that the Legislature could, if it desired, prohibit its practice entirely except to those licensed to practice medicine.—In re Barresi, N. Y., 196 N. Y. S. 376.

63. Statute.—Where Comp. Laws 1917, § 4448, as amended by Laws 1921, c. 91, defines the acts or omissions on the part of a physician which would authorize the revocation of his license, an ordinance, in the absence of statutory authority, cannot impose greater or different duties in that respect.—Moorehouse v. Hammond, Utah, 209 Pac. 883.

64. **Principal and Agent**—Authority of Agent.—Whether defendant was estopped to deny that his traveling salesman was authorized to contract on behalf of defendant for repairs to the automobile used by the salesman in connection with his employment held for the jury.—Thompson v. Collier-Reynolds Grocer Co., Ark., 244 S. W. 355.

65. **Railroads**—Reasonable Care.—One approaching a railroad crossing has a right to expect of the railroad that its employees will obey the law with respect to warning signals, and, while a failure to give them does not absolve a traveler from the duty of using reasonable care, it is a circumstance proper to be considered by the jury in determining whether the traveler was guilty of negligence.—High v. Waterloo, C. F. & N. Ry. Co., Iowa, 190 N. W. 331.

66. **Receivers**—Proceedure.—As a general rule, the remedy of a receivership is purely ancillary, being a proceeding in rem, though the court may appoint a receiver, under certain conditions and circumstances, as an independent remedy and, of course, as the main object and purpose of the suit.—Fleming v. Virginia Mining Co., Ky., 244 S. W. 295.

67. **Sales**—Delivery.—A contract for the sale of all calves dropped in 1915 to September 15th on seller's ranches and also the 1914 calves which were unbranded at the date of the contract was entire and indivisible, and delivery of all the calves was the essence of the contract; and the indivisible nature of the contract was not affected by a clause in the contract that delivery when commenced was to continue until all were delivered, thus permitting delivery in lots, as this clause related merely to the manner of delivery, nor by the fact that the calves were purchased at a specified price per head, as this was merely for convenient computation of the whole price.—Clayton Bros. v. Littlefield, Tex., 244 S. W. 507.

68. Liability.—Where a wholesale dealer in stock feed-stuffs sold to a retail dealer therein a carload of hay, warranting it to be No. 2 alfalfa hay, sound and fit for stock feed, and such retailer sold it to his customer, who fed it to his mules, which were killed as the result of said hay being rotten and poisonous, under the principle above referred to there is no liability on the part of such wholesaler on his warranty to the subpurchaser for the loss of the latter's mules.—Pease & Dwyer Co. v. Somers Planting Co., Miss., 93 So. 673.

69. Severable Contracts.—A sale of 45 suits of five different specified lots is a severable contract under the rule that the sale of different articles at the same time for separate prices is a severable contract.—Simmons Cohn & Co. v. Weil, Tex., 244 S. W. 562.

70. Warranties.—Where a contract recited certain warranties, and that the buyer understood there were no others, and as to rebuilt machinery it was agreed "there is no warranty," there was no warranty of a rebuilt tractor.—Friesen v. Hart-Parr Co., Mont., 209 Pac. 986.

71. **Trusts**—Innocent Purchaser.—Where a husband used trust funds in improving the homestead, the wife who profited by the use thereof without paying any consideration for the benefit was not entitled to the protection of an innocent purchaser, though she had no knowledge of the misapplication of the funds.—Smith v. Green, Tex., 243 S. W. 1006.

72. **Vendor and Purchaser**—Breach as Waiver.—Where purchaser's refusal, before the date of performance, to perform his contract, was based on the ground of alleged defects in the title, as shown by the abstract then furnished, he waived other grounds, such as vendor's failure to pay the taxes before date of performance and to tender an abstract showing the title down to such date.—Vincent v. McElvain, Ill., 136 N. E. 502.